IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 344 of 1997
with
SPECIAL CIVIL APPLICATION No 345 of 1997

For Approval and Signature:

HON'BLE MR. JUSTICE ANANT S DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

FULABHAI H HARIJAN

Versus

DIRECTOR OF MUNICIPALITIES

Appearance:

1. Special Civil Application No. 344 of 1997

MR BIPIN I MEHTA for Petitioner No. 1-2
RULE SERVED for Respondent No. 1
MR BN PATEL for Respondent No. 2
MR HM PRACHHAK Ld. AGP for Respondent No. 3

CORAM : HON'BLE MR. JUSTICE ANANT S DAVE

Date of decision: 02/12/2004

COMMON ORAL JUDGEMENT

1. Since both these petitions have identical subject matter with regard to the claim of arrears of salary to be paid to the retired/surviver of deceased employee, who were working as Safai Kamadar since number of years, as per Government resolution dated 30.1.1995 issued by the Department of Panchayats & Rural Department of State of Gujarat.

That the said Government resolution dated 30.1.1995 is specifically issued for equation of posts in Panchayat services of erstwhile Halol Nagar Panchayat (at present Halol Municipality) and to fix the pay scale of the employees. It is pertinent to note that the said Government resolution is issued pursuant to the judgment delivered by the Division Bench of this High Court in Special Civil Application No. 1205/1978 and the decision thereon on dated 3.5.1993, whereby the benefits of Pay Commissions were directed to be given and rationalize the pay-scale structure according to the recommendations made by the Pay Commissions. That the said judgment still holds a good low, since Special Leave Petition filed by the State of Gujarat against the said decision is also rejected and, therefore, consequent to that, this Government resolution is issued.

The petitioner of both these petitions have specifically relied on sub-clause(5) of Clause-8 which prescribes, pay-scale to be given to the employee of erstwhile Halol Nagar Panchayat and on fixation of the said pay-scale, if arrears of salary is to be paid, it is clearly mentioned that as per requirement of sec. 204 of Gujarat Panchayats Act, 1961 and sec. 266(kh) sub-sec. (2) of Gujarat Municipalities Act, 1963, Nagar Panchayat Halol is to pay such arrears of salary of the employee, as fixed under the Rule, from its own fund. That sub-clause(5) of clause (8) of this G.R. applicable to those employees who have retired, prior to the orders passed and/or expired before that. That even the employees who were to retire on 31.3.1995 and if eligible to be paid the differences of arrears of salary, such an employee or their legal heirs were also entitled to receive such benefits.

Ld. advocate for the petitioner Shri Bipin Mehta, appearing in both these special civil applications, has submitted that petitioner no. 1 and 2 of Special Civil Application No. 344 of 1997 have retired from the services of Halol Municipality as Sweeper, with effect from 1.6.1987 and 1.10.1991, respectively. Though they are paid all retirement benefits, according to Shri Mehta, both these petitioners

have not been paid arrears of salary due to them for a period from 1.1.1986 to 1.6.1987 i.e. for one year and 5 months in case of petitioner no. 1 and so far as petitioner no. 2 is concerned, the said period is from 1.1.1986 to 1.10.1991 i.e. about 5 years and 9 months. So far as Special Civil Application NO. 345 of 1997 is concerned, this petition is filed by the legal heirs of deceased employee, who expired during the course of employment on 15.3.1987 and the period for which the arrears of salary is claimed, is from1.1.1986 to 15.3.1987 i.e. about 1 years and 2 & 1/2 months. With this factual backdrop, Shri Mehta ld. advocate for the petitioners has placed reliance on sub-clause(5) of Clause (8) of Government resolution dated 30.1.1995 for payment of arrears of wages accrued to the petitioners, respectively. Shri Mehta further relied on the decision reported in AIR 1984 SC 161 in the case of State of Gujarat vs. R.K. Soni & Ors., where the Apex Court was concerned with the status of panchayat employees in the State of Gujarat and it is clearly laid down in the said decision that panchayat service constituted under Sec. 203 of the Gujarat Panchayat Act is a civil service of the State and the panchayat servant is entitled to get all the benefits at par with the State Government employees.

According to Shri Mehta ld. advocate for the petitioners the Government resolution dated 30.1.1995 is for the implementation of the judgment of the Division Bench of this High Court as recited in the preamble of the said Resolution as confirmed by the Apex Court and benefits will naturally follow as stated in the said Government resolution and, therefore, appropriate directions be given to the respondent-authorities as claimed in the prayer clause of the petitions.

2. Mr. B.N. Patel ld. advocate for the respondent has submitted on the basis of the affidavit - in - reply filed by respondent no. 2, Shri R.K. Joshi, Chief Officer of Halol Nagar Panchayat that so far as all retirement benefits calculated in accordance with the revised pay scale have been paid to the petitioners and/or concerned legal heirs of the deceased employee which includes benefits of pension and gratuity. That according to Shri BN Patel, ld. advocate for the respondent no. 2, liability to pay arrears of salary as claimed by the petitioners, is not with respondent Nagarpalika but the State Government is liable to pay difference of arrears, particularly in view of the fact that Nagar Panchayat of Halol has to pay various dues with regard to developmental expenditure, which may

include arrears of water supply scheme and such other utility services. According to Shri Patel, ultimately the liability to pay arrears of difference in salary to the employee of panchayat service is with the State Government, since before conversation of present Municipality of Halol in its present from, it was Halol Nagar Panchayat and, therefore, the dues of erstwhile Nagar Panchayat, are liability of the State Government and not of the Municipality.

3. Ld. AGP Shri Prachhak, who appears for State of Gujarat, subsequently joined as party respondent no. 3, submits that to pay arrears of difference in salary of employee of Nagarpalika or the Municipality, as the case may be, primary liability is with concerned Nagarpalika or the municipality, since the employment is given by such Nagarpalika or the Municipality and the Government gives grant towards payment of salary of such employees from time to time. Shri Prachhak ld.AGP has further submitted that the resolution at Annexure-A dated 30.1.1995 is specifically passed by the Government for equation of posts of different cadres in panchayat services of erstwhile Halol Nagar Panchayat and to fix the standard of pay-scale accordingly and particularly clause-(8) of the said resolution fastened with the liability upon the Halol Nagar Panchayat to pay such difference of arrears of salary from its own fund.

4. I have heard ld. advocates appearing for the parties and perused the evidence on record and particularly the Government resolution dated 30.1.1995 at Annexure-A to this petition. That submission of Shri Bipin Mehta ld. advocate for the petitioners with regard to claim of differences of arrears of salary is not disputed at all and the question arise only with regard to the liability to pay such claim, whether by the municipality respondent no. 2 or by the State respondent no. 3 herein. The contentions of Shri Mehta ld. advocate for the petitioners are well founded and justified, since the submissions are inconsonance with the decision of the Division Bench of this court dated 30.5.1983 in Special Civil Application NO. 1205 of 1978 as confirmed by the Apex Court in Civil Appeal NO. 4867 of 1983, whereby panchayat service constituted under sec. 203 of the Gujarat Panchayat Act, 1961 as prevalent was held to be a civil service and the panchayat employee was considered at par with the civil servant. Not only that, but the Government resolution dated 30.1.1995 clearly recites such position of law and to give real effect of the verdict of the Apex Court, the said resolution is passed. This court cannot accept the contention of Shri

Patel ld. advocate for the respondent no. 2 that the municipality is not liable to pay difference of arrears of salary of erstwhile Halol Nagar Panchayat on the ground that the petitioners were never the employee of Halol Municipality, which came into existence in its present form as Municipality, on conversion of erstwhile Halol Nagar Panchayat. It is clear position of law that on conversion of erstwhile Nagar Panchayat into Municipality or the Municipal Borough, as the case may be, the Municipal inherits all the liabilities and responsibilities of erstwhile Nagar Panchayat and looking to this very aspect, the petitioners have been paid their retirement dues as stated in the affidavit in reply. It cannot be gain said, once the claim of the petitioners as to employment of erstwhile Halol Nagar Panchayat in the form of after retirement dues, is accepted, the arrears of dues of salary is also to be paid which flows from the right of the employment as accrued to him by the verdict of the Apex Court as reflected in the resolution dated 30.1.1995. That number of representations have been made by the petitioners and the last of such representation was made on 19.9.1996. Till today, the outstanding dues towards difference of arrears of salary revised from time to time, remain unpaid by the respondent no. 2. Accordingly, there cannot be any hesitation for this Court to give appropriate direction to respondent no. 2 to pay arrears of differences in salary as claimed by the petitioners on the basis of the resolution dated 30.1.1995 within reasonable time limits.

5. Accordingly, the respondent no. 2 is directed to pay the arrears of differences of revision of pay scale to the petitioners as claimed by them as per the provisions of the Government resolution dated 30.1.1995 from the date when such arrears became due to the petitioners and further directed to calculate the arrears of differences revision of pay scale within a period of two months from the date of receipt of the order and, thereafter, to pay such outstanding dues within two months after determining the amount of arrears of dues to the petitioners. Rule made absolute in both the petitions. No order as to costs.

(ANANT S. DAVE, J.)
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